

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CALVIN L. TIDSWELL,)
)
Movant)
)
v.) Civil No. 05-115-P-C
) Criminal No. 90-63-P-C
UNITED STATES OF AMERICA,)
)
Respondent)

RECOMMENDED DECISION ON 28 U.S.C. § 2255 MOTION

Calvin Tidswell has filed a 28 U.S.C. § 2255 motion which includes one ground faulting his attorney for failing to file a direct appeal after the revocation of his term of supervised release. Tidswell claims that he expressly requested that counsel take this step. The United States requested and was granted two extensions of time in which to file its response to the § 2255 motion. The second of these motions indicated that it had contacted Tidswell's attorney on the revocation, counsel had indicated that he had documentation of his conversations with Tidswell, and that the United States needed additional time to receive and review this documentation.

On October 11, 2005, the United States filed a response to Tidswell's motion, indicating that it "consents to the entry of an order granting the Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 for the limited purpose of permitting petitioner Tidswell to reinstate an appeal from the order dated June 21, 2004 revoking his term of supervised release." (Gov't Response at 1)(citing Roe v. Flores-

Ortega, 528 U.S. 470 (2000). Accordingly, I recommend that the Court enter an order reinstating Tidswell's appeal.

Tidswell, in a motion filed after the United States' response, has filed a motion for appointment of counsel in anticipation of his appeal. (Docket No. 13.) In the event the court accepts this recommendation, appropriate steps should be taken to secure counsel on appeal for Mr. Tidswell. Toward that end I now direct the clerk to immediately forward to Tidswell the appropriate form for appointment of counsel on appeal. Tidswell is directed to return it to the court forthwith, and in any event, by November 7, 2005.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

Dated: October 25, 2005